



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/782,370   | 02/19/2004  | Joanne Kaye          | 486.0046USU         | 3571             |
| 7590 10/05/2005  |             |                      | EXAMINER            |                  |
| Charles N. J. Ruggiero, Esq.<br>Ohlandt, Greeley, Ruggiero & Perle, L.L.P.<br>One Landmark Square, 10th Floor<br>Stamford, CT 06901-2682 |             |                      | HALE, GLORIA M      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3765                |                  |

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

e

|                              |                                      |                                    |  |
|------------------------------|--------------------------------------|------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/782,370 | <b>Applicant(s)</b><br>KAYE ET AL. |  |
|                              | <b>Examiner</b><br>Gloria Hale       | <b>Art Unit</b><br>3765            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amendment and RCE of 7-22-05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-5-05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1 concerning the amendment adding "valleys and dimples", the newly added limitations have not been done as in the previous amended claims wherein they are done as being "one of a group of..". The present amendment now adds the limitations in the alternative and the limitations are not structural equivalents and therefore it now renders the claim indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al (US 5,447,462).

Art Unit: 3765

Smith et al discloses a brassiere with a pair of bust cups at 52 with a central panel 53, side panels 54 and with the cups including a first 11, second 12 and third layer (adhesive web-open net 13) with the perforations within. The third layer is a net material. The perforations are visible through sheer outer fabric layer, is free form since it is the holes in the net, includes valleys, is of the claimed materials and is glued. (See Smith et al, col. 8, line 17 – 46; col. 11, lines 24-26 and col. 15, line 33 in addition to figures 2, 11 and 12). The claims must clearly claim the structure of the invention using the terminology outlined in the specification. The perforations must be described as outlined in the specification and the exact structure must be claimed. The present claims broadly claim more than what is outlined in the present specification. The terminology as claimed is unclear.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Judson (US 6,174,217).

Judson discloses a brassiere 14 with cups 18, a central gore panel 24 and side panels 22 with each cup having an inner layer 32 and an outer layer 30 with the inner layer 32 being of a sheer/transparent material or with cut outs such as netting or lace. The third layer or spacer layer is 36 and can be of lace or sheer transparent material, which has holes or perforations in a free form design and is breathable as broadly claimed. The brassiere and the third layer insert is made of the claimed materials and are sewn or have a mechanical connection of a pocket as broadly claimed. (See Judson, col. 2, line 60- col. 4, line 29 and figures 1-3).

***Response to Arguments***

Applicant's arguments filed 7-22-05 have been fully considered but they are not persuasive.

The Smith et al patent states that the film is in the form of a net. Net materials have spaces between the horizontal and vertical cross pieces. The net cross pieces are of an adhesive film material. When heated they remain in the net structure and adhere the layers above and below. Smith et al also states that the adhesive does not seep through the adjacent fabric layers but only adheres to them. When the outer layer of the Smith material is of a lace material as suggested therein, the material has openings and is breathable through those openings. The net has openings and is also breathable through those openings even when the adhesive adheres the fabrics together and therefore, all of the fabric layers are breathable there through. The openings in the net film allow air there through. The perforations are the openings in the net and the pattern is formed by those openings in a net or grid pattern. The adhesive film fuses the layers. The adhesive film is the glue. The layers are connected peripherally in addition to being connected throughout. The adhesive net film is the spacer layer and the spacing is the thickness of the net like film. The pattern or grid formed by the net is a free form pattern as broadly claimed. It is noted that the present claims would read on brassieres with two or more sheer or lace fabric layers in the cup.


Claims 16-20 are allowed.

None of the cited references, alone or in combination, disclose the method of making an article of clothing including the molding of a spacer layer in addition to the step of stitching the spacer layer with the pattern between first and second fabric layers wherein the pattern is visible through at least one of the first or second layers as claimed in claim 16.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

\*\*\*